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CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1895

Introduced by Assembly Member Nation

February 5, 2004

An act to amend Sections 317, 366.26, and 634 of the Welfare and Institutions Code, relating to immigrant children.

LEGISLATIVE COUNSEL'S DIGEST

AB 1895, as amended, Nation. Immigrant children.

(1) Existing law authorizes the juvenile court to adjudge a child a dependent child of the court if the child has suffered, or there is a substantial risk that the child will suffer, among other things, serious physical harm inflicted nonaccidentally upon the child by his or her parent or guardian, or serious physical harm or illness as a result of the failure or inability of the parent or guardian to adequately supervise or protect that child. Existing law authorizes the juvenile court to terminate the parental rights of a child who has been adjudged a dependent child of the court. Existing law further requires that a dependent child who has no counsel be represented by appointed counsel at all dependency proceedings, as specified.

This bill would additionally require that a dependent child of the court who is not a citizen of the United States and for whom the court has determined parental reunification is no longer an option, be provided an attorney specializing in immigration law who shall pursue

special immigrant status for that child. The bill would require the Judicial Council to promulgate specified rules of court in relation to the qualifications of those attorneys. *The bill would exempt certain counties from those requirements, except as specified.*

By imposing additional duties on county employees to contract for those services, the bill would impose a state-mandated local program.

(2) Existing law authorizes the juvenile court to adjudge a child a ward of the court for being habitually disobedient or truant, and provides appointed counsel for the representation thereof.

This bill would also require that a child who is adjudged a ward of the court pursuant to specified provisions of law who is not a citizen of the United States and who is in foster care or deemed unlikely to reunify with his or her parents, as specified, be provided an attorney specializing in the area of immigration law who may pursue special immigrant status for that ward. The bill would require the Judicial Council to promulgate rules of court relating to the qualifications of those attorneys. *The bill would exempt certain counties from those requirements, except as specified.*

By imposing additional duties on county employees, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 317 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 317. (a) When it appears to the court that a parent or guardian
- 4 of the child desires counsel but is presently financially unable to



1 afford and cannot for that reason employ counsel, the court may
2 appoint counsel as provided in this section.

3 (b) When it appears to the court that a parent or guardian of the
4 child is presently financially unable to afford and cannot for that
5 reason employ counsel, and the child has been placed in
6 out-of-home care, or the petitioning agency is recommending that
7 the child be placed in out-of-home care, the court shall appoint
8 counsel, unless the court finds that the parent or guardian has made
9 a knowing and intelligent waiver of counsel as provided in this
10 section.

11 (c) Where a child is not represented by counsel, the court shall
12 appoint counsel for the child unless the court finds that the child
13 would not benefit from the appointment of counsel. The court shall
14 state on the record its reasons for that finding. A primary
15 responsibility of any counsel appointed to represent a child
16 pursuant to this section shall be to advocate for the protection,
17 safety, and physical and emotional well-being of the child.
18 Counsel for the child may be a district attorney, public defender,
19 or other member of the bar, provided that the counsel does not
20 represent another party or county agency whose interests conflict
21 with the child's. The fact that the district attorney represents the
22 child in a proceeding pursuant to Section 300 as well as conducts
23 a criminal investigation or files a criminal complaint or
24 information arising from the same or reasonably related set of facts
25 as the proceeding pursuant to Section 300 is not in and of itself a
26 conflict of interest. The court may fix the compensation for the
27 services of appointed counsel. The appointed counsel shall have
28 a caseload and training that assures adequate representation of the
29 child. The Judicial Council shall promulgate rules of court that
30 establish caseload standards, training requirements, and
31 guidelines for appointed counsel for children and shall adopt rules
32 as required by Section 326.5 no later than July 1, 2001.

33 (d) The counsel appointed by the court shall represent the
34 parent, guardian, or child at the detention hearing and at all
35 subsequent proceedings before the juvenile court. Counsel shall
36 continue to represent the parent or child unless relieved by the
37 court upon the substitution of other counsel or for cause. The
38 representation shall include representing the parent or the child in
39 termination proceedings and in those proceedings relating to the
40 institution or setting aside of a legal guardianship.

1 (e) The counsel for the child shall be charged in general with
2 the representation of the child's interests. To that end, the counsel
3 shall make or cause to have made any further investigations that
4 he or she deems in good faith to be reasonably necessary to
5 ascertain the facts, including the interviewing of witnesses, and he
6 or she shall examine and cross-examine witnesses in both the
7 adjudicatory and dispositional hearings. The counsel may also
8 introduce and examine his or her own witnesses, make
9 recommendations to the court concerning the child's welfare, and
10 participate further in the proceedings to the degree necessary to
11 adequately represent the child. In any case in which the child is
12 four years of age or older, counsel shall interview the child to
13 determine the child's wishes and to assess the child's well-being,
14 and shall advise the court of the child's wishes. Counsel for the
15 child may not advocate for the return of the child if, to the best of
16 his or her knowledge, that return conflicts with the protection and
17 safety of the child. In addition, counsel shall investigate the
18 interests of the child beyond the scope of the juvenile proceeding
19 and report to the court other interests of the child that may need to
20 be protected by the institution of other administrative or judicial
21 proceedings. The attorney representing a child in a dependency
22 proceeding is not required to assume the responsibilities of a social
23 worker and is not expected to provide nonlegal services to the
24 child. The court shall take whatever appropriate action is
25 necessary to fully protect the interests of the child.

26 (f) Either the child or the counsel for the child, with the
27 informed consent of the child if the child is found by the court to
28 be of sufficient age and maturity to so consent, may invoke the
29 psychotherapist-client privilege, physician-patient privilege, and
30 clergyman-penitent privilege. If the child invokes the privilege,
31 counsel may not waive it, but if counsel invokes the privilege, the
32 child may waive it. Counsel shall be holder of these privileges if
33 the child is found by the court not to be of sufficient age and
34 maturity to so consent. For the sole purpose of fulfilling his or her
35 obligation to provide legal representation of the child, counsel for
36 a child shall have access to all records with regard to the child
37 maintained by a health care facility, as defined in Section 1545 of
38 the Penal Code, health care providers, as defined in Section 6146
39 of the Business and Professions Code, a physician and surgeon or
40 other health practitioner as defined in Section 11165.8 of the Penal

1 Code or a child care custodian, as defined in Section 11165.7 of the
2 Penal Code. Notwithstanding any other law, counsel shall be given
3 access to all records relevant to the case which are maintained by
4 state or local public agencies. All information requested from a
5 child protective agency regarding a child who is in protective
6 custody, or from a child's guardian ad litem, shall be provided to
7 the child's counsel within 30 days of the request.

8 (g) In a county of the third class, if counsel is to be provided to
9 a child at county expense other than by counsel for the agency, the
10 court shall first utilize the services of the public defender prior to
11 appointing private counsel, to provide legal counsel. Nothing in
12 this subdivision shall be construed to require the appointment of
13 the public defender in any case in which the public defender has
14 a conflict of interest. In the interest of justice, a court may depart
15 from that portion of the procedure requiring appointment of the
16 public defender after making a finding of good cause and stating
17 the reasons therefor on the record.

18 (h) In a county of the third class, if counsel is to be appointed
19 for a parent or guardian at county expense, the court shall first
20 utilize the services of the alternate public defender, prior to
21 appointing private counsel, to provide legal counsel. Nothing in
22 this subdivision shall be construed to require the appointment of
23 the alternate public defender in any case in which the public
24 defender has a conflict of interest. In the interest of justice, a court
25 may depart from that portion of the procedure requiring
26 appointment of the alternate public defender after making a
27 finding of good cause and stating the reasons therefor on the
28 record.

29 (i) (1) In addition to appointed counsel pursuant to subdivision
30 (c), a dependent child of the court who is a resident of this state,
31 but who is not a legal permanent resident or citizen of the United
32 States, and for whom the court has determined parental
33 reunification is no longer an option, shall be provided with an
34 immigration attorney. The immigration attorney shall pursue
35 special immigrant juvenile status for that child pursuant to Section
36 1101(a)(27)(J) of Title 8 of the United States Code, or pursue any
37 other avenue to obtain legal permanent resident status or United
38 States citizenship, if deemed to be in the best interest of that child
39 by the attorney. Before July 1, 2005, the Judicial Council shall
40 promulgate rules of court that establish standards, training

1 requirements, and guidelines for attorneys eligible to be appointed
2 under this paragraph.

3 (2) Paragraph (1) does not apply to a county that already
4 provides, or contracts for, those services. *Legal counsel need not*
5 *be appointed in any county where there is a process for providing*
6 *dependent children with immigration services whether those*
7 *services are provided by social service agencies or attorneys. In*
8 *those counties, however, any undocumented dependent child*
9 *receiving immigration services through the county's process has*
10 *the right to request that the court appoint immigration counsel if*
11 *the county's immigration assistance proves inadequate. That child*
12 *and the child's caregiver shall be given notice of this right by the*
13 *county. If the court determines, after a hearing, that the county's*
14 *immigration assistance has been inadequate, the court shall then*
15 *appoint new immigration counsel for the child pursuant to*
16 *paragraph (1).*

17 SEC. 2. Section 366.26 of the Welfare and Institutions Code
18 is amended to read:

19 366.26. (a) This section applies to children who are adjudged
20 dependent children of the juvenile court pursuant to subdivision
21 (c) of Section 360. The procedures specified herein are the
22 exclusive procedures for conducting these hearings; Part 2
23 (commencing with Section 3020) of Division 8 of the Family Code
24 is not applicable to these proceedings. Section 8714.7 of the
25 Family Code is applicable and available to all dependent children
26 meeting the requirements of that section, if the postadoption
27 contact agreement has been entered into voluntarily. For children
28 who are adjudged dependent children of the juvenile court
29 pursuant to subdivision (c) of Section 360, this section and
30 Sections 8604, 8605, 8606, and 8700 of the Family Code and
31 Chapter 5 (commencing with Section 7660) of Part 3 of Division
32 12 of the Family Code specify the exclusive procedures for
33 permanently terminating parental rights with regard to, or
34 establishing legal guardianship of, the child while the child is a
35 dependent child of the juvenile court.

36 (b) At the hearing that shall be held in juvenile court for all
37 children who are dependents of the juvenile court, the court, in
38 order to provide stable, permanent homes for these children, shall
39 review the report as specified in Section 361.5, 366.21, or 366.22,
40 shall indicate that the court has read and considered it, shall receive

1 other evidence that the parties may present, and then shall make
2 findings and orders in the following order of preference:

3 (1) Terminate the rights of the parent or parents and order that
4 the child be placed for adoption and, upon the filing of a petition
5 for adoption in the juvenile court, order that a hearing be set. The
6 court shall proceed with the adoption after the appellate rights of
7 the natural parents have been exhausted.

8 (2) On making a finding under paragraph (3) of subdivision (c),
9 identify adoption as the permanent placement goal and order that
10 efforts be made to locate an appropriate adoptive family for the
11 child within a period not to exceed 180 days.

12 (3) Appoint a legal guardian for the child and order that letters
13 of guardianship issue.

14 (4) Order that the child be placed in long-term foster care,
15 subject to the periodic review of the juvenile court under Section
16 366.3.

17 In choosing among the above alternatives the court shall
18 proceed pursuant to subdivision (c).

19 (c) (1) If the court determines, based on the assessment
20 provided as ordered under subdivision (i) of Section 366.21 or
21 subdivision (b) of Section 366.22, and any other relevant
22 evidence, by a clear and convincing standard, that it is likely the
23 child will be adopted, the court shall terminate parental rights and
24 order the child placed for adoption. The fact that the child is not
25 yet placed in a preadoptive home nor with a relative or foster
26 family who is prepared to adopt the child, shall not constitute a
27 basis for the court to conclude that it is not likely the child will be
28 adopted. A finding under subdivision (b) or paragraph (1) of
29 subdivision (e) of Section 361.5 that reunification services shall
30 not be offered, under subdivision (e) of Section 366.21 that the
31 whereabouts of a parent have been unknown for six months or that
32 the parent has failed to visit or contact the child for six months or
33 that the parent has been convicted of a felony indicating parental
34 unfitness, or, under Section 366.21 or 366.22, that the court has
35 continued to remove the child from the custody of the parent or
36 guardian and has terminated reunification services, shall
37 constitute a sufficient basis for termination of parental rights
38 unless the court finds a compelling reason for determining that
39 termination would be detrimental to the child due to one or more
40 of the following circumstances:

1 (A) The parents or guardians have maintained regular
2 visitation and contact with the child and the child would benefit
3 from continuing the relationship.

4 (B) A child 12 years of age or older objects to termination of
5 parental rights.

6 (C) The child is placed in a residential treatment facility,
7 adoption is unlikely or undesirable, and continuation of parental
8 rights will not prevent finding the child a permanent family
9 placement if the parents cannot resume custody when residential
10 care is no longer needed.

11 (D) The child is living with a relative or foster parent who is
12 unable or unwilling to adopt the child because of exceptional
13 circumstances, that do not include an unwillingness to accept legal
14 or financial responsibility for the child, but who is willing and
15 capable of providing the child with a stable and permanent
16 environment and the removal of the child from the physical
17 custody of his or her relative or foster parent would be detrimental
18 to the emotional well-being of the child. This subparagraph does
19 not apply to any child who is living with a nonrelative and who is
20 either (i) under six years of age or (ii) a member of a sibling group
21 where at least one child is under six years of age and the siblings
22 are, or should be, permanently placed together.

23 (E) There would be substantial interference with a child's
24 sibling relationship, taking into consideration the nature and
25 extent of the relationship, including, but not limited to, whether the
26 child was raised with a sibling in the same home, whether the child
27 shared significant common experiences or has existing close and
28 strong bonds with a sibling, and whether ongoing contact is in the
29 child's best interest, including the child's long-term emotional
30 interest, as compared to the benefit of legal permanence through
31 adoption.

32 If the court finds that termination of parental rights would be
33 detrimental to the child pursuant to subparagraph (A), (B), (C),
34 (D), or (E), it shall state its reasons in writing or on the record.

35 (2) The court shall not terminate parental rights if at each and
36 every hearing at which the court was required to consider
37 reasonable efforts or services, the court has found that reasonable
38 efforts were not made or that reasonable services were not offered
39 or provided.

1 (3) If the court finds that termination of parental rights would
2 not be detrimental to the child pursuant to paragraph (1) and that
3 the child has a probability for adoption but is difficult to place for
4 adoption and there is no identified or available prospective
5 adoptive parent, the court may identify adoption as the permanent
6 placement goal and without terminating parental rights, order that
7 efforts be made to locate an appropriate adoptive family for the
8 child within a period not to exceed 180 days. During this 180-day
9 period, the public agency responsible for seeking adoptive parents
10 for each child shall, to the extent possible, ask each child who is
11 10 years of age or older to identify any individuals who are
12 important to the child, to identify potential adoptive parents. The
13 public agency may ask any child who is younger than 10 years of
14 age to provide that information, as appropriate. During the
15 180-day period, the public agency shall, to the extent possible,
16 contact other private and public adoption agencies regarding the
17 availability of the child for adoption. During the 180-day period,
18 the public agency shall conduct the search for adoptive parents in
19 the same manner as prescribed for children in Sections 8708 and
20 8709 of the Family Code. At the expiration of this period, another
21 hearing shall be held and the court shall proceed pursuant to
22 paragraph (1), (3), or (4) of subdivision (b). For purposes of this
23 section, a child may only be found to be difficult to place for
24 adoption if there is no identified or available prospective adoptive
25 parent for the child because of the child's membership in a sibling
26 group, or the presence of a diagnosed medical, physical, or mental
27 handicap, or the child is the age of seven years or more.

28 (4) (A) If the court finds that adoption of the child or
29 termination of parental rights is not in the best interest of the child,
30 because one of the conditions in subparagraph (A), (B), (C), (D),
31 or (E) of paragraph (1) or in paragraph (2) applies, the court shall
32 either order that the present caretakers or other appropriate persons
33 shall become legal guardians of the child or order that the child
34 remain in long-term foster care. Legal guardianship shall be
35 considered before long-term foster care, if it is in the best interests
36 of the child and if a suitable guardian can be found. A child who
37 is 10 years of age or older who is placed in a group home shall be
38 asked to identify any individuals who are important to the child to
39 identify potential guardians. The agency may ask any child who

1 is younger than 10 years of age to provide that information, as
2 appropriate.

3 (B) If the child is living with a relative or a foster parent who
4 is willing and capable of providing a stable and permanent
5 environment, but not willing to become a legal guardian, the child
6 shall not be removed from the home if the court finds the removal
7 would be seriously detrimental to the emotional well-being of the
8 child because the child has substantial psychological ties to the
9 relative caretaker or foster parents. The court shall also make an
10 order for visitation with the parents or guardians unless the court
11 finds by a preponderance of the evidence that the visitation would
12 be detrimental to the physical or emotional well-being of the child.

13 (5) If the court finds that the child should not be placed for
14 adoption, that legal guardianship shall not be established, and that
15 there are no suitable foster parents except exclusive-use homes
16 available to provide the child with a stable and permanent
17 environment, the court may order the care, custody, and control of
18 the child transferred from the county welfare department to a
19 licensed foster family agency. The court shall consider the written
20 recommendation of the county welfare director regarding the
21 suitability of the transfer. The transfer shall be subject to further
22 court orders.

23 The licensed foster family agency shall place the child in a
24 suitable licensed or exclusive-use home which has been certified
25 by the agency as meeting licensing standards. The licensed foster
26 family agency shall be responsible for supporting the child and for
27 providing appropriate services to the child, including those
28 services ordered by the court. Responsibility for the support of the
29 child shall not, in and of itself, create liability on the part of the
30 foster family agency to third persons injured by the child. Those
31 children whose care, custody, and control are transferred to a foster
32 family agency shall not be eligible for foster care maintenance
33 payments or child welfare services, except for emergency
34 response services pursuant to Section 16504.

35 (d) The proceeding for the appointment of a guardian for a
36 child who is a dependent of the juvenile court shall be in the
37 juvenile court. If the court finds pursuant to this section that legal
38 guardianship is the appropriate permanent plan, it shall appoint the
39 legal guardian and issue letters of guardianship. The assessment
40 prepared pursuant to subdivision (g) of Section 361.5, subdivision



1 (i) of Section 366.21, and subdivision (b) of Section 366.22 shall
2 be read and considered by the court prior to the appointment, and
3 this shall be reflected in the minutes of the court. The person
4 preparing the assessment may be called and examined by any party
5 to the proceeding.

6 (e) The proceeding for the adoption of a child who is a
7 dependent of the juvenile court shall be in the juvenile court if the
8 court finds pursuant to this section that adoption is the appropriate
9 permanent plan and the petition for adoption is filed in the juvenile
10 court. Upon the filing of a petition for adoption, the juvenile court
11 shall order that an adoption hearing be set. The court shall proceed
12 with the adoption after the appellate rights of the natural parents
13 have been exhausted. The full report required by Section 8715 of
14 the Family Code shall be read and considered by the court prior to
15 the adoption and this shall be reflected in the minutes of the court.
16 The person preparing the report may be called and examined by
17 any party to the proceeding. It is the intent of the Legislature,
18 pursuant to this subdivision, to give potential adoptive parents the
19 option of filing in the juvenile court the petition for the adoption
20 of a child who is a dependent of the juvenile court. Nothing in this
21 section is intended to prevent the filing of a petition for adoption
22 in any other court as permitted by law, instead of in the juvenile
23 court.

24 (f) At the beginning of any proceeding pursuant to this section,
25 if the child or the parents are not being represented by previously
26 retained or appointed counsel, including, in the case of any child
27 who is not a legal permanent resident or citizen of the United
28 States, counsel appointed pursuant to subdivision (i) of Section
29 317, the court shall proceed as follows:

30 (1) The court shall consider whether the interests of the child
31 require the appointment of counsel. If the court finds that the
32 interests of the child do require this protection, the court shall
33 appoint counsel to represent the child. If the court finds that the
34 interests of the child require the representation of counsel, counsel
35 shall be appointed whether or not the child is able to afford
36 counsel. A child under 10 years of age may not be present in court
37 unless the child or the child's counsel so requests or the court so
38 orders.

39 (2) If a parent appears without counsel and is unable to afford
40 counsel, the court shall appoint counsel for the parent, unless this

1 representation is knowingly and intelligently waived. The same
2 counsel shall not be appointed to represent both the child and his
3 or her parent. The public defender or private counsel may be
4 appointed as counsel for the parent.

5 (3) Private counsel appointed under this section shall receive a
6 reasonable sum for compensation and expenses, the amount of
7 which shall be determined by the court. The amount shall be paid
8 by the real parties in interest, other than the child, in any
9 proportions the court deems just. However, if the court finds that
10 any of the real parties in interest are unable to afford counsel, the
11 amount shall be paid out of the general fund of the county.

12 (g) The court may continue the proceeding for not to exceed 30
13 days as necessary to appoint counsel, and to enable counsel to
14 become acquainted with the case.

15 (h) (1) At all proceedings under this section, the court shall
16 consider the wishes of the child and shall act in the best interests
17 of the child.

18 (2) If the child is 10 years of age or older and is not present at
19 a hearing held pursuant to this section, the court shall determine
20 whether the minor was properly notified of his or her right to attend
21 the hearing and inquire as to the reason why the child is not present.

22 (3) (A) The testimony of the child may be taken in chambers
23 and outside the presence of the child's parent or parents if the
24 child's parent or parents are represented by counsel, the counsel is
25 present, and any of the following circumstances exist:

26 (i) The court determines that testimony in chambers is
27 necessary to ensure truthful testimony.

28 (ii) The child is likely to be intimidated by a formal courtroom
29 setting.

30 (iii) The child is afraid to testify in front of his or her parent or
31 parents.

32 (B) After testimony in chambers, the parent or parents of the
33 child may elect to have the court reporter read back the testimony
34 or have the testimony summarized by counsel for the parent or
35 parents.

36 (C) The testimony of a child also may be taken in chambers and
37 outside the presence of the guardian or guardians of a child under
38 the circumstances specified in this subdivision.

39 (i) Any order of the court permanently terminating parental
40 rights under this section shall be conclusive and binding upon the

1 child, upon the parent or parents and upon all other persons who
2 have been served with citation by publication or otherwise as
3 provided in this chapter. After making the order, the court shall
4 have no power to set aside, change, or modify it, but nothing in this
5 section shall be construed to limit the right to appeal the order.

6 (j) If the court, by order or judgment declares the child free
7 from the custody and control of both parents, or one parent if the
8 other does not have custody and control, the court shall at the same
9 time order the child referred to the State Department of Social
10 Services or a licensed adoption agency for adoptive placement by
11 the agency. However, no petition for adoption may be granted until
12 the appellate rights of the natural parents have been exhausted. The
13 State Department of Social Services or licensed adoption agency
14 shall be responsible for the custody and supervision of the child
15 and shall be entitled to the exclusive care and control of the child
16 at all times until a petition for adoption is granted. With the consent
17 of the agency, the court may appoint a guardian of the child, who
18 shall serve until the child is adopted.

19 (k) Notwithstanding any other provision of law, the application
20 of any person who, as a relative caretaker or foster parent, has
21 cared for a dependent child for whom the court has approved a
22 permanent plan for adoption, or who has been freed for adoption,
23 shall be given preference with respect to that child over all other
24 applications for adoptive placement if the agency making the
25 placement determines that the child has substantial emotional ties
26 to the relative caretaker or foster parent and removal from the
27 relative caretaker or foster parent would be seriously detrimental
28 to the child's emotional well-being.

29 As used in this subdivision, "preference" means that the
30 application shall be processed and, if satisfactory, the family study
31 shall be completed before the processing of the application of any
32 other person for the adoptive placement of the child.

33 (l) (1) An order by the court that a hearing pursuant to this
34 section be held is not appealable at any time unless all of the
35 following applies:

36 (A) A petition for extraordinary writ review was filed in a
37 timely manner.

38 (B) The petition substantively addressed the specific issues to
39 be challenged and supported that challenge by an adequate record.

1 (C) The petition for extraordinary writ review was summarily
2 denied or otherwise not decided on the merits.

3 (2) Failure to file a petition for extraordinary writ review
4 within the period specified by rule, to substantively address the
5 specific issues challenged, or to support that challenge by an
6 adequate record shall preclude subsequent review by appeal of the
7 findings and orders made pursuant to this section.

8 (3) The Judicial Council shall adopt rules of court, effective
9 January 1, 1995, to ensure all of the following:

10 (A) A trial court, after issuance of an order directing a hearing
11 pursuant to this section be held, shall advise all parties of the
12 requirement of filing a petition for extraordinary writ review as set
13 forth in this subdivision in order to preserve any right to appeal in
14 these issues. This notice shall be made orally to a party if they are
15 present at the time of the making of the order or by first-class mail
16 by the clerk of the court to the last known address of a party not
17 present at the time of the making of the order.

18 (B) The prompt transmittal of the records from the trial court
19 to the appellate court.

20 (C) That adequate time requirements for counsel and court
21 personnel exist to implement the objective of this subdivision.

22 (D) That the parent or guardian, or their trial counsel or other
23 counsel, is charged with the responsibility of filing a petition for
24 extraordinary writ relief pursuant to this subdivision.

25 (4) The intent of this subdivision is to do both of the following:

26 (A) Make every reasonable attempt to achieve a substantive
27 and meritorious review by the appellate court within the time
28 specified in Sections 366.21 and 366.22 for holding a hearing
29 pursuant to this section.

30 (B) Encourage the appellate court to determine all writ
31 petitions filed pursuant to this subdivision on their merits.

32 (5) This subdivision shall only apply to cases in which an order
33 to set a hearing pursuant to this section is issued on or after January
34 1, 1995.

35 (m) Except for subdivision (j), this section shall also apply to
36 minors adjudged wards pursuant to Section 727.31.

37 SEC. 3. Section 634 of the Welfare and Institutions Code is
38 amended to read:

39 634. (a) When it appears to the court that the minor or his or
40 her parent or guardian desires counsel but is unable to afford and

cannot for that reason employ counsel, the court may appoint counsel. In a case in which the minor is alleged to be a person described in Section 601 or 602, the court shall appoint counsel for the minor if he or she appears at the hearing without counsel, whether he or she is unable to afford counsel or not, unless there is an intelligent waiver of the right of counsel by the minor. In the absence of that waiver, if the parent or guardian does not furnish counsel and the court determines that the parent or guardian has the ability to pay for counsel, the court shall appoint counsel at the expense of the parent or guardian. In any case in which it appears to the court that there is a conflict of interest between a parent or guardian and child that one attorney could not properly represent both, the court shall appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or guardian. In a county where there is no public defender the court may fix the compensation to be paid by the county for service of that appointed counsel.

(b) (1) In addition to appointed counsel pursuant to subdivision (a), a minor who is alleged to be a ward of the court pursuant to Section 601 or subdivision (a) of Section 602 and who is a resident of this state, but who is not a legal permanent resident or citizen of the United States, and who is in foster care pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 727, or is deemed unlikely to reunify with parents as determined by a probation officer, social worker, or the court, shall be provided with an immigration attorney who may pursue special immigrant juvenile status for that ward pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code, or pursue any other avenue to obtain legal permanent resident status or United States citizenship, if deemed in the best interest of that ward by the attorney. Before July 1, 2005, the Judicial Council shall promulgate rules of court to establish standards, training requirements, and guidelines for attorneys eligible to be appointed under this paragraph.

(2) Paragraph (1) does not apply to a county that already provides, or contracts for, those services. *Legal counsel need not be appointed in any county where there is a process for providing wards with immigration services whether those services are provided by social service agencies or attorneys. In those counties, however, any undocumented ward receiving immigration services through the county's process has the right to request that the court*

1 *appoint immigration counsel if the county's immigration*
2 *assistance proves inadequate. That ward and the ward's caregiver*
3 *shall be given notice of this right by the county. If the court*
4 *determines, after a hearing, that the county's immigration*
5 *assistance has been inadequate, the court shall then appoint new*
6 *immigration counsel for the ward pursuant to paragraph (1).*

7 SEC. 4. Notwithstanding Section 17610 of the Government
8 Code, if the Commission on State Mandates determines that this
9 act contains costs mandated by the state, reimbursement to local
10 agencies and school districts for those costs shall be made pursuant
11 to Part 7 (commencing with Section 17500) of Division 4 of Title
12 2 of the Government Code. If the statewide cost of the claim for
13 reimbursement does not exceed one million dollars (\$1,000,000),
14 reimbursement shall be made from the State Mandates Claims
15 Fund.

